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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

September 5, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act of 1996
CC Docket No. 96-128 Ex Parte

Dear Mr. Caton:

On Thursday, September 5, Diane Giacalone, Michael Kellogg and Ben Almond, all representing the RBOC Payphone Coalition met with John Nakahata of Chairman Reed E. Hundt's office. The purpose of the meetings was to discuss the key issues in the docket proceeding. The attached documents were used for discussion purposes in the meeting.

Please associate this notification and the accompanying documents with the above referenced docket proceeding.

If there are questions concerning this matter, please contact the undersigned.

Sincerely,

Ben G. Almond

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Executive Director-Federal Regulatory

Attachment

cc: John Nakahata

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List ABCDE

State of Vermont
Public Service Board
Chittenden Bank Bldg., 4th Floor
112 State Street
Drawer 20
Montpelier, VT 05620-2701
Tel.: (802) 828-2358
TDD (VT Relay): 1-800-253-0191

August 14, 1996

Thomas Dailey, Esq.
NYNEX
185 Franklin Street - Room 1403
Boston, MA 02110-1585

Re: Removal of Pay Phones

Dear Mr. Dailey:

Thank you for your letter of July 29, 1996 in response to the letter that Sharon Appel and I sent to you on July 9. The Public Service Board ("Board") believes that your July 29 response satisfies its current concerns[1] and, accordingly, has decided that NYNEX may proceed with its pay phone management program, subject to the conditions set forth below. We recognize that circumstances may change, and we remain open to any future showing by NYNEX that these conditions should be modified.

Outdoor Pay Phones

The first condition is that NYNEX will refrain from removing any single station outdoor pay phone. As indicated in our July 9 letter, and as agreed to in your July 29 response, an outdoor pay phone is any pay phone that is not inside a fully enclosed building. In your July 29 letter you further indicate that "NYNEX is willing to refrain from removing single station outdoor pay phones until the FCC issues a ruling in Docket 96-128." The Board wishes to be clear that it is not authorizing NYNEX to

[1] The Board continues to have long-term concerns about the public safety and public access implications of pay phone removal. As noted in our July 9 letter, the Board hopes that these concerns will be satisfactorily addressed by the pending FCC rulemaking proceeding regarding pay telephone reclassification and compensation (CC Docket No. 96-128).

remove the outdoor pay phones once the FCC issues its ruling in Docket 96-128; indeed, until the ruling is issued, we cannot determine its implications for these pay phones. Thus, once the FCC issues its ruling in Docket 96-128, if NYNEX believes the ruling to permit the removal of any of these outdoor pay phones NYNEX should so notify the Board, but may not remove the phones without the Board's assent or the future showing referred to above.

Specific Phones That Raise Public Health, Safety and Convenience Concerns

Second, the Board is concerned that there may be indoor pay phones slated for possible removal that could raise public safety issues. In our meeting on June 21, and in your letter dated May 21, 1996, NYNEX indicated that the NYNEX-Vermont Public Affairs and Regulatory teams identified pay stations that should remain for public safety reasons. The Board assumes that these pay phones are the ones with the designation "Do Not Disconnect - Public Affairs" in the "statusdesc" column of the list of phones slated for conversion or removal. (Please let us know if this assumption is incorrect.)

In addition to these pay phones, the Board has received written inquiries from local officials and a health care facility raising public health, safety and convenience concerns about the removal of four additional pay phones: one at the Berlin Elementary School, one at the Bennington Police Department, one at a Burlington Housing Authority building,[2] and one near the emergency room at the Mt. Ascutney Hospital. In accordance with these requests, these four pay phones should not be removed, pending the FCC rulemaking. After the FCC rulemaking is completed, if NYNEX believes the rules to permit the removal of any of these four pay phones, NYNEX should so notify the Board; NYNEX may not remove the phones without the Board's permission.

Thus, the second condition placed upon NYNEX's continuation of its pay phone management program is that NYNEX shall not, without the Board's permission, remove the pay phones designated "Do No Remove - Public Affairs" nor remove the pay phones at the Berlin Elementary School, the Bennington Police Department, the Burlington Housing Authority building identified on page 17 of the list, and the Mt. Ascutney Hospital emergency room.

Phones In or Near Shelters

Third, while your July 29 letter indicates that NYNEX had not yet heard from the State Office of Economic Opportunity ("SOEO") regarding shelter locations, SOEO

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[2] While the Burlington Housing Authority did not identify any particular pay phone in its letter and was not included on the list of stations identified for conversion or removal, there is a tenants' association shown on page 17 of the list. The Board assumes that this pay phone is located in a Burlington Housing Authority building; please advise us if this assumption is incorrect.

did send a list of fourteen pay phones of concern to David Usher on July 24, 1996. Consequently, the third condition placed upon NYNEX's continuation of its pay phone management program is that none of the pay phones on the SOEO July 24 list are to be removed, unless SOEO concurs in writing in such removal. In the event of a disagreement between NYNEX and SOEO, NYNEX may bring the dispute to the Board for resolution.

Multi-Station Locations

Fourth, with respect to multi-station locations, if a dispute arises as to whether any public pay station should remain for public safety reasons, the location owner should be able to go to the Department of Public Service, and if necessary the Board, for resolution of that dispute, as indicated in our July 9 letter. Thus, the fourth condition placed upon NYNEX's continuation of its pay phone management program is that in the event of a dispute between NYNEX and a multi-station location owner regarding the public safety necessity of retaining a particular pay phone, NYNEX shall not remove that pay phone until the dispute has been resolved by the Department, and if necessary by the Board.

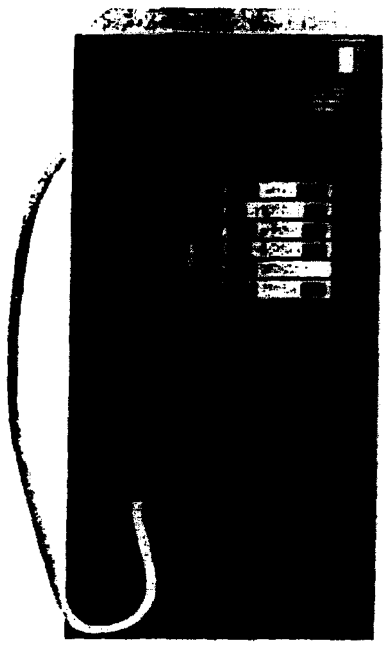
Thank you again for your continued attention and cooperation. The Board hopes that this letter presents a satisfactory resolution to this matter for NYNEX and the other parties who have been involved.

Very truly yours,

Kurt Janson
General Counsel

cc: Department of Public Service
Department of Public Safety
Vermont League of Cities and Towns
Division of Travel and Tourism
E-911 Board
Office of Economic Opportunity

RBOC COALITION ON PAYPHONES:
EX PARTE PRESENTATION MATERIALS



OVERARCHING GOALS OF SECTION 276

- "Promote competition among payphone service providers"

- "Promote the widespread deployment of payphone services to the benefit of the general public"

Competition = Widespread Deployment

SPECIFIC GOALS OF RBOC PAYPHONE COALITION

- Market-based per-call compensation on all completed calls
- Ability to negotiate with location provider over choice of InterLATA carrier
- Valuation of physical assets at net book in keeping with prior Commission precedents
- Flexibility to choose structural integration subject to Computer III safeguards
- Deregulation of semi-public payphones and fair compensation on public interest payphones

THE PAYPHONE INDUSTRY TODAY

- More than 15,000 independent PSPs
  - Competition for locations and end user traffic
- More than 500 toll service providers
  - Competition for payphone toll traffic
  - Large carriers (e.g., 1-800-CALL-ATT, 1-800 COLLECT)
  - Debit cards
- More than 2 million payphones
- Estimated RBOC annual revenues of $2.3 billion.
- Competition from wireless ($18+ billion annual revenues)

DISTRIBUTION OF PAYPHONES IN COALITION REGION*

	Coalition	IPSPs
Total # of phones:	1,030,348	386,399
Total # of semi-pubs:	200,291	--
Total # of non-semi-pubs making less than $4/day:	330,362	--
Total # of competitive payphones:	499,065 (56%)	386,399 (44%)

Individual Coalition member range: 41% - 72%

NUMBER OF NEWLY INSTALLED PUBLIC PAYPHONES*

	Coalition	IPSPs
1994	63,569 (46%)	76,052 (54%)
1995	55,177 (44%)	71,360 (56%)
1996 (to 6/30/96)	25,822 (40%)	39,308 (60%)

*Data only available from four regions; semi-public phones not included.

PER-CALL COMPENSATION

Key Principle: To regulate price is to regulate supply

- In setting per-call rate, FCC is determining the number of payphones that will be deployed
- Higher rate will lead to greater deployment; lower rate will lead to reduced deployment
- Competitive industry will not retain below-cost phones:
  - PSPs are not regulated utilities
  - Cross-subsidy is forbidden
  - Concerns with claims of predatory pricing

THREE APPROACHES TO PER-CALL COMPENSATION

- Cost-based approach:

  Determine anticipated costs of payphone unit under new legal regime

- "Revenue-neutral" approach:

  Replace lost subsidies (access charge elements) and compensate for increased costs (business lines, commissions)

- Market-based approach:

  Let market forces work wherever they can; where market cannot work, look for market-based proxies

PROBLEMS WITH COST-BASED APPROACH

- Cost-based approach does not equal "fair compensation"
- Cost-based approach either ignores widely different actual costs (among PSPs and in different states) or creates administrative nightmare
- Cost-based approach fails to support payphones with below-average usage or above-average costs
- Cost-based approach will result in regulatory death spiral

PROBLEMS WITH REVENUE-NEUTRAL APPROACH

- Revenue-neutral approach does not equal "fair compensation"
- Revenue-neutral approach assumes that LEC PSPs are being fairly compensated today, but many states do not allow rates that achieve full cost recovery
- Revenue-neutral approach based on one segment of the industry (RBOCs) will not be valid for industry as a whole

MARKET PRICES

- Market prices benefit consumers
  - Better services, lower costs, and higher deployment
- This is the approach the FCC chose in NPRM
  - Market is working for IPSPs on 0+ and 1+ calls
  - Market should be allowed to work wherever it can
- Market prices are only way for the Commission to move towards deregulating the payphone industry
  - Alternative is old-fashioned regulation in which FCC tries to better the market
  - This is a market in which the FCC can declare victory and move on

MARKET-BASED DEFAULT RATE

- TOCSIA prevents negotiations on dial around and 1-800-subscriber calls because PSPs have no leverage; same for 1+ and 0+ calls from RBOC phones under long-term contracts

- Commission should establish a default rate for 1+, 0+, dial around and 1-800-subscriber calls:
  - Default rate restores some leverage; if set high enough will allow negotiations to reach market price
  - Default rate will not lead to higher prices for consumers ("pass through"); based on the rates already negotiated by independent PSPs
  - Default rate will let market work wherever it can (e.g., Tariff 12)

WHAT'S THE DEFAULT RATE?

Per-Call Commission Received by Largest APCC Member	$0.90
Average Per-Call Compensation Assuming Average AT&T Tariffs	***$0.81***
Average Non-Coin Per-Call Compensation Received by Three Largest IPPs	$0.84
Updated and Revised 0- Transfer Charge Study	$0.46-$0.54

LOCAL CALL RATE

- All Coalition members agree that the market, not regulators, should establish the local call rate
- Three members believe immediate pricing freedom is appropriate
- Three members believe there should be a period of transition to full pricing freedom

RBOC PARTICIPATION IN SELECTION OF INTERLATA CARRIER

- RBOC participation is critical to use of market-based prices on 0+ and 1+ calls
- RBOC participation in selection of interLATA carrier is flipside to ability of all PSPs to participate in selection of intraLATA carrier
- RBOC participation will create "level playing field" for all PSPs
  - One-stop shopping
  - Aggregate toll for small businesses
- Location providers/consumers will benefit
  - Reduction in "carrier slamming"
  - Consumers will have rate predictability
  - Competitive impact on OSPs will improve rates
- RBOCs unable to discriminate against OSPs
  - Payphone market is competitive
  - Many OSPs are large competitors with strong bargaining power

INTRALATA CARRIER SELECTION

- All PSPs should be able to participate in selection of intraLATA carriers

- Dialing parity not required for Section 276
  - Not technically feasible to apply to payphones on a stand alone basis
  - Independent PSPs already have the functional equivalent of dialing parity with "smart" payphones

VALUATION OF PAYPHONE ASSETS

- Asset reclassification, not sale of assets
- Reclassification value consistent with precedent (net book value)
- Only tangible assets that exist on the books today should be considered
- Interest charges are not applicable
- Going concern valuation is inappropriate
  - Impractical to administer
  - Contrary to precedent and GAAP
  - Serious adverse effects on on-going business

NONSTRUCTURAL SAFEGUARDS

- The Coalition supports the application of nonstructural safeguards
  - Precedent of CI-III
  - Uniform cost allocation standards
  - External and internal audits
  - Price caps reduced incentive for non-compliance
- Proven effectiveness of nonstructural safeguards